

# BRAE CORPORATION

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RECORDATION NO. .... Filed 1425

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November 29, 1978

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H.G. HOME, U.S. INTERSTATE COMMERCE COMMISSION  
Acting Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

9875  
RECORDATION NO. .... Filed 1425

NOV 30 1978 - 11 02 AM

INTERSTATE COMMERCE COMMISSION

Dear Sir:

Enclosed for filing and recordation pursuant to Section 20c of the Interstate Commerce Act are the following documents relating to the railroad equipment described and marked in accordance with Schedule I attached hereto:

(1) Equipment Trust Agreement dated as of November 1, 1978 between Morgan Guaranty Trust Company of New York, as Trustee, and Brae Corporation.

(2) Lease Agreement dated as of March 29, 1978 between BRAE Corporation and Oregon, Pacific & Eastern Railway Company (including Riders No. 1, 2, and 3 and Equipment Schedule No. 1).

The names and addresses of the parties to the above transactions are as follows:

(1) Equipment Trust Agreement

(a) Trustee: Morgan Guaranty Trust  
Company of New York  
30 West Broadway  
New York, New York 10015.

(b) Company: Brae Corporation  
Three Embarcadero Center  
San Francisco, California 94111.

(2) Lease Agreement

(a) Lessor: Brae Corporation  
Three Embarcadero Center  
San Francisco, California 94111.

*Handwritten signatures and initials on the left margin:*  
- A large signature, possibly "Baldwin".  
- A signature, possibly "L. Powell".  
- A signature, possibly "C. ...".

- (b) Lessee: Oregon, Pacific & Eastern  
Railway Company  
P.O. Box 565  
Cottage Grove, Oregon 97424.
- (c) Assignee: Morgan Guaranty Trust  
Company of New York  
30 West Broadway  
New York, New York 10015.

BRAE Corporation, the corporation which originally executed the Lease Agreement, was merged into its wholly-owned subsidiary, Brae Corporation (then known as BraeLease Corporation), on September 27, 1978. Pursuant to such merger, Brae Corporation assumed all of the rights and obligations of BRAE Corporation. Accordingly, Brae Corporation, as the successor to BRAE Corporation, is now party to the Lease Agreement.

The Equipment Trust Agreement also functions as an assignment to the Trustee of the Company's interest, as Lessor, in the Lease Agreement.

Also enclosed is cash in the amount of \$100, the prescribed fee for filing and recordation of the enclosed documents.

Please file and record the enclosed documents and cross-index them under the names of, (1) in the case of the Equipment Trust Agreement, the Trustee and the Company (Brae Corporation, BraeLease Corporation and BRAE Corporation) and (2) in the case of the Lease Agreement, the Lessor (Brae Corporation, BraeLease Corporation and BRAE Corporation), the Lessee and the Assignee.

Return to the person presenting this letter, together with your letter confirming such filing and recordation and your fee receipt therefor, all counterparts of the enclosed documents not required for filing.

Very truly yours,

  
Assistant Secretary

SCHEDULE I

<u>Quantity</u>	<u>Type</u>	<u>Identifying Numbers (Both Inclusive)</u>	<u>Markings</u>
100	70-Ton Box cars, AAR Class XM	OPE 15101 - OPE 15200	"Title to this Car Subject to Documents Recorded under Section 20c of Interstate Commerce Act"

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

11/30/78

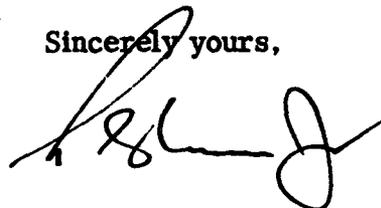
OFFICE OF THE SECRETARY

Michael T. Everett  
Brae Corporation  
Three Embarcadero Center  
San Francisco, Calif. 94111

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 11/30/78 at 11:05am and assigned recordation number(s) 9875 & 9875-A

Sincerely yours,



H.G. Homme, Jr.,  
Secretary

Enclosure(s)

SE-30-T  
(2/78)

# BRAE CORPORATION

RECORDATION NO. 9875-<sup>A</sup> Filed 1425

NOV 30 1978 - 11 05 AM

INTERSTATE COMMERCE COMMISSION

## LEASE AGREEMENT

THIS LEASE AGREEMENT, made as of this 29 day of March, 1978, between the BRAE CORPORATION, a California corporation, Three Embarcadero Center, San Francisco, California 94111 ("BRAE"), as Lessor, and OREGON, PACIFIC & EASTERN RAILWAY COMPANY, an Oregon corporation ("Lessee"), as Lessee.

### 1. Scope of Agreement

A. BRAE agrees to lease to Lessee, and Lessee agrees to lease from BRAE, freight cars as set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Cars."

B. It is the intent of the parties to this Agreement that BRAE shall at all times be and remain the lessor of the Cars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and that it will take such action and execute such documents as may be necessary to accomplish this intent.

### 2. Term

A. This Agreement shall remain in full force until it shall have been terminated as to all of the Cars as provided herein. The term of lease with respect to all of the Cars described on each Schedule shall be for fifteen (15) years (the "initial lease term") commencing upon the date when all Cars on such Schedule have been delivered as set forth in Section 3A hereof.

B. If this Agreement has not been earlier terminated and no default has occurred and is continuing, it shall automatically be extended for not more than five consecutive periods of twelve months each (the "extended lease term") with respect to all of the Cars described on each Schedule, provided, however, that BRAE or Lessee may terminate this Agreement as to all, but not fewer than all, of the Cars on any such Schedule by written notice delivered to the other not less than twelve months prior to the end of the initial lease term or any extended lease term.

### 3. Supply Provisions

A. BRAE will inspect each of the Cars tendered by the manufacturer for delivery to Lessee. Prior to such inspection, however, Lessee shall confirm in writing to BRAE that the sample Car which will be made available for Lessee's inspection prior to the commencement of deliveries conforms to the specifications of the equipment agreed to by Lessee. Upon such approval by Lessee and BRAE's determination that the Car conforms to the specifications ordered by BRAE and to all applicable governmental regulatory specifications, and this Agreement has not been terminated, BRAE will accept delivery thereof at the manufacturer's facility and shall notify Lessee in writing of such acceptance. Each of the Cars shall be deemed delivered to Lessee upon acceptance by BRAE. The Cars shall be moved to Lessee's railroad line at no cost to Lessee as soon after acceptance of delivery by BRAE as is consistent with mutual convenience and economy. Due to the nature of

railroad operations in the United States, BRAE can neither control nor determine when the Cars leased hereunder will actually be available to Lessee for its use on its railroad tracks. Notwithstanding that Lessee may not have immediate physical possession of the Cars leased hereunder, Lessee agrees to pay to BRAE the rent set forth in this Agreement. To move the Cars to Lessee's railroad line and insure optimal use of the Cars after the first loading of freight for each Car on the railroad line of Lessee (the "initial loading"), BRAE agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and BRAE, to issue movement orders with respect to such Cars to other railroad lines in accordance with ICC and AAR interchange agreements and rules.

B. Lessee agrees that so long as it shall have on lease any Cars, it shall not lease freight cars from any other party until it shall have received all of the Cars on the Schedule or Schedules. Once Cars have been delivered to Lessee, it shall then not lease freight cars similar to the type leased hereunder from any other party until it shall have given BRAE at least one (1) month prior written notice of its desire to lease such freight cars and BRAE shall then have the opportunity to procure and lease such freight cars to Lessee subject to the terms and conditions of this Agreement, and at terms not less favorable to Lessee than those offered by such other parties. The foregoing, however, shall not be deemed to prohibit Lessee from leasing from other parties if BRAE does not offer lease terms equal to or better than those offered by such other parties. Lessee shall give preference to BRAE and shall load the Cars leased from BRAE prior to loading substantially similar freight cars leased from other parties or purchased by Lessee subsequent to the date of this Agreement or interchanged with railroads; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks.

C. Additional Cars may be leased from BRAE by Lessee only upon the mutual agreement of the parties hereto. Upon such agreement, such additional Cars shall be identified in Schedules to this Agreement and shall benefit from and be subject to this Agreement upon execution of the Schedules by BRAE and Lessee. Notwithstanding the execution of any Schedules, including Schedules for additional Cars, the delivery of any Car to Lessee shall be subject to manufacturer's delivery schedules, financing satisfactory to BRAE and the mutual acknowledgment of the parties that the addition of such Cars is not likely to reduce utilization of all Cars on lease to Lessee to less than 87.5 per cent in any calendar quarter. If, due to the factors listed in the preceding sentence, fewer than all of the Cars listed on a Schedule shall be delivered to Lessee, the term of the lease shall be deemed to have commenced on the date the final Car of the most recent group of Cars was delivered to Lessee; (2)

#### 4. Railroad Markings and Record Keeping

A. BRAE and Lessee agree that on or before delivery of any Cars to Lessee, said Cars will be lettered with the railroad markings of Lessee and may also be marked with the name and/or other insignia used by Lessee. Such name and/or insignia shall comply with all applicable regulations.

B. At no cost to Lessee, BRAE shall during the term of this Agreement prepare for Lessee's signature and filing all documents relating to the registration, maintenance and record keeping functions involving the Cars. Such documents shall include but are not limited to the following: (i) appropriate AAR documents including an application for relief from AAR Car Service Rules 1 and 2; (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies. Relief from AAR car service rules 1 & 2 shall be at the option of the Lessee.

C. Each Car leased hereunder shall be registered at no cost to Lessee in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. BRAE shall, on behalf of Lessee, perform all record keeping functions related to the use of the Cars by Lessee and

BC-10/77 (2a) within such one month period

(2) Provided that Lessee shall be entitled to share in payments as provided in Section 6A with respect to each Car from such Car's initial loading. Term of lease refers to the 15 year term, it being intended that the lease will be in effect upon

other railroads in accordance with AAR railroad interchange agreements and rules, such as car hire reconciliation. Correspondence from railroads using such Cars shall be addressed to Lessee at such address as BRAE shall select.

D. All record keeping performed by BRAE hereunder and all record of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by BRAE in a form suitable for reasonable inspection by Lessee from time to time during regular BRAE business hours. Lessee shall supply BRAE with such reports, including daily telephone reports<sup>(3)</sup> of the number of Cars on Lessee's tracks, regarding the use of the Cars by Lessee on its railroad line as BRAE may reasonably request.

## 5. Maintenance, Taxes and Insurance

A. Except as otherwise provided herein, BRAE will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each of the Cars during its lease term and any extension thereof, including but not limited to repairs, maintenance and servicing, unless the same was occasioned by the fault of Lessee. Lessee shall inspect all Cars interchanged to it to insure that such Cars are in good working order and condition and shall be liable to BRAE for any repairs required for damage<sup>(4)</sup> not noted<sup>(5)</sup> thereon at the time of interchange. Lessee hereby transfers and assigns to BRAE for and during the lease term of each Car all of its right, title and interest in any warranty in respect to the Cars. All claims or actions on any warranty so assigned shall be made and prosecuted by BRAE at its sole expense and Lessee shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be payable solely to BRAE.

B. Except as provided above, BRAE shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. Upon request of BRAE<sup>(6)</sup>, Lessee shall perform any necessary maintenance and repairs to Cars on Lessee's railroad tracks as may be reasonably requested by BRAE<sup>(6)</sup>. BRAE shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition throughout the term of the lease of such Cars. Lessee may make running repairs to facilitate continued immediate use of a Car, but shall not otherwise make any repairs, alterations, improvements or additions to the Cars without BRAE's prior written consent. If Lessee makes an alteration, improvement or addition to any Car without BRAE's prior written consent, Lessee shall be liable to BRAE for any revenues lost due to such alteration. Title to any such alteration, improvement or addition shall be and remain with BRAE.

C. Lessee will at all times while this Agreement is in effect be responsible for the Cars while on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Service Rules—Freight for freight cars not owned by Lessee on Lessee's railroad tracks. (See 13H)

Lessee shall also maintain bodily injury and property damage liability insurance. Lessee shall furnish BRAE concurrently with the execution hereof and thereafter at intervals of not more than twelve calendar months with certificates of insurance with respect to the insurance required as aforesaid signed by an independent insurance broker. All insurance shall be taken out in the name of Lessee and BRAE (or its assignee) as their interests may appear.

D. BRAE agrees to reimburse Lessee for all taxes, assessments and other governmental charges of whatsoever kind or character paid by Lessee relating to each Car and on the lease, delivery or operation thereof which may remain unpaid as of the date of delivery of such Car to Lessee or which may be accrued, levied, assessed or imposed during the lease term, except taxes on income imposed on Lessee and sales or use taxes imposed on<sup>(7)</sup> that portion of the mileage charges and/or car hire revenues received by Lessee pursuant to Section 6a (ii) hereof.

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(3) (To be initiated by and at the expense of BRAE)

(4) which would cause a defect card to be generated and

(5) and can be accommodated by the railroad

(6) at BRAE's expense determined by AAR hourly specified piece

work rate

BRAE shall forward to Lessee all sales and use tax payments received by it on behalf of Lessee. BRAE and Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Cars. BRAE shall review all applicable tax returns prior to filing.

## 6. Lease Rental

A. Lessee agrees to pay the following rent to BRAE for the use of the Cars:

(i) BRAE shall receive all payments made to Lessee by other railroad companies for their use or handling of the Cars, including but not limited to mileage charges, straight car hire payments and incentive car hire payments (all of which payments made to Lessee are hereinafter collectively referred to as "payments") if the utilization of all of the Cars delivered to Lessee on an aggregate basis for each calendar year shall be equal to or less than ~~90~~<sup>98</sup> per cent. For the purpose of this Agreement, utilization of the Cars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that car hire payments are earned by Lessee on the Cars, commencing from the initial loading, and the denominator of which is the aggregate number of days in each calendar year that the Cars are on lease to Lessee, commencing from the initial loading (such term referred to as "utilization"). In addition, BRAE will receive, as additional rental, all monies earned by the Cars prior to their initial loading.

(ii) In the event utilization exceeds ~~90~~<sup>90</sup> per cent in any calendar year, BRAE shall receive an amount equal to the BRAE Base Rental

For the purpose hereof, BRAE Base Rental shall be an amount equal to the total payments for the calendar year multiplied by a fraction, the numerator of which is ~~90~~<sup>90</sup> per cent and the denominator of which is the utilization for such calendar year. (The above determination of BRAE Base Rental insures that Lessee will, if utilization is greater than ~~90~~<sup>90</sup> per cent in any calendar year, receive 100% of all the payments made by other railroads for use or handling of the Cars in excess of the BRAE Base Rental.)

(iii) If BRAE pays other railroads to move Cars in accordance with Section 3A, <sup>(7)</sup> except for any payments incurred to deliver such Cars to Lessee's railroad line, Lessee shall reimburse BRAE for such payments only from and out of the monies received by Lessee pursuant to Subsection 6A(ii).

(iv) The rental charges payable to BRAE by Lessee shall be paid from the payments received by Lessee in the following order until BRAE receives the amounts due it pursuant to this section: (1) incentive car hire payments; (2) straight car hire payments; (3) mileage charges and (4) other.

(v) In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 7 of the AAR Car Service and Care Hire Agreement Code of Car Hire Rules—Freight and the appropriate amount due as a result thereof is received by BRAE, said damaged or destroyed Car will be removed from the coverage of this Agreement as of the date that payment of car hire payments ceased.

B. The calculations required above shall be made within five months after the end of each calendar year. However, to enable BRAE to meet its financial commitments, BRAE may, prior to such calculations, retain the payments received by it on behalf of Lessee. Further, since the parties desire to determine on a quarterly basis the approximate amount of the rental charges due BRAE, BRAE shall within three months after the end of each calendar quarter, calculate on a quarterly basis rather than a yearly basis the amount due <sup>OR LESSEE</sup> pursuant to this section. Any amounts payable <sup>(8)</sup> pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that following the yearly calculation, any amount paid to either party in excess of the amounts required by the yearly calculation shall be promptly refunded to the appropriate party.

- (7) (only diversions approved by Lessee)  
(8) to BRAE and Lessee

C. If at any time during a calendar quarter, the number of days that the Cars have not earned car hire payments is such as to make it mathematically certain that the utilization in such calendar quarter cannot be equal to or greater than 87.5 per cent, BRAE may, at its option and upon not less than ten (10) days' prior written notice to Lessee, terminate this Agreement as to such Cars as BRAE shall determine. ⑨

D. BRAE may, at its option, terminate this Agreement if the ICC shall, at any time, (1) issue an order reducing incentive car hire payments for Cars on an annual basis to three months or less without a corresponding increase in straight car hire payments or other monies available to both BRAE and Lessee at least equal in amount to such reduction, (2) determine that Lessee may not apply its incentive car hire receipts in payment of the rental charges set forth in this section or (3) require that Lessee spend funds not earned by the Cars in order for Lessee to continue to meet its obligations set forth in this section.

E. During the term of this Agreement, if any Car remains on Lessee's railroad tracks for more than seven consecutive days, BRAE may, at its option and upon not less than twenty-four (24) hours' prior written notice, terminate this Agreement as to such Car and withdraw such Car from Lessee's railroad tracks. If any such Car remains on Lessee's railroad tracks more than seven consecutive days because Lessee has not given preference to the Cars as specified in Section 3B, Lessee shall be liable for and remit to BRAE an amount equal to the payments Lessee would have earned if such Cars were in the physical possession and use of another railroad for the period in excess of two days. (9a) Such option shall not be exercisable so long

#### 7. Possession and Use

as total utilization is 87.5% or more during any calendar quarter.

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent Cars are customarily used in the railroad freight business, provided that Lessee retain on its railroad tracks no more Cars than are necessary to fulfill its immediate requirements to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by BRAE in connection with the acquisition of Cars, i.e., upon notice to Lessee from any such secured party or owner that an event of default has occurred and is continuing under such financing agreement, such party may require that all rent shall be made directly to such party and/or that the Cars be returned to such party. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations, and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either BRAE or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

B. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Cars or any interest therein or in this Agreement or any Schedule thereto. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrances, security interest, or claim if the same shall arise at any time.

#### 8. Default

A. The occurrence of any of the following events shall be an event of default:

(i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ten (10) days after the date any such payment is due.

(9) (NOTE: Cars to be removed would be equal to an amount reasonably estimated by BRAE to achieve 87.5% utilization or Lessee has option to make up per diem payments so as to assure BRAE receives revenue as if

(ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within thirty (30) days after notice to Lessee of breach

(iii) Any act of insolvency by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency, which is not released or bonded against within (60) days thereafter.

(vi) Any action by Lessee to discontinue rail service on all or a portion of its tracks or abandon any of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state, if such action would substantially decrease utilization as defined in 6A.

B. Upon the occurrence of any event of default, BRAE may, at its option, terminate this Agreement and may

(i) Proceed by any lawful means to enforce performance by Lessee of this Agreement or to recover damages for a breach thereof (and <sup>non-prevailing party</sup> agrees to bear costs and expenses, including reasonable attorneys' fees, in securing such enforcement), or

(ii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate; and thereupon BRAE may enter upon any premises where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee. BRAE shall nevertheless have the right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to that date.

## 9. Termination

At the expiration or termination of this Agreement as to any Cars, Lessee will surrender possession of such Cars to BRAE by delivering the same to BRAE. A Car shall be no longer subject to this Agreement upon the removal of Lessee's railroad markings from the Cars and the placing thereon of such markings as may be designated by BRAE, either, at the option of BRAE, (1) by Lessee upon return of such Cars to Lessee's railroad line or (2) by another railroad line which has physical possession of the Car at the time of or subsequent to termination of the lease term as to such Car. If such Cars are not on the railroad line of Lessee upon termination, <sup>or expiration</sup> any cost of assembling, delivering, storing, and transporting such Cars to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by BRAE. If such Cars are on the railroad line of Lessee upon such expiration or termination or are subsequently returned to Lessee's railroad line, Lessee shall at its own expense (11a) remove Lessee's railroad markings <sup>(10a)</sup> from the Cars <sup>(10)</sup> and place thereon such markings as may be designated by BRAE. After the removal and replacement of markings, Lessee shall use its best efforts to load such Cars with freight and deliver them to a connecting carrier for shipment. Lessee shall provide up to sixty (60) days' free storage on its railroad tracks <sup>(10)</sup> for BRAE or the subsequent lessee of any terminated Car. If any Car is terminated pursuant to (11b) prior to the end of its lease term, Lessee shall be liable to BRAE for all costs and expenses incurred by BRAE to repaint the Cars and place thereon the markings and name or other insignia of BRAE's subsequent lessee.

BC-10/77 (11b) Section 8A (i), 8A (ii) or Lessee does not give preference in loading as outlined in 3B

(10a) (Note: only railroad initials & number)

(10) (only those Cars on Lessee's tracks.)

(11) to the extent track is available.

(11a) as promptly as practicable

## 10. Indemnities

BRAE will defend, indemnify and hold Lessee harmless from and against (1) any and all loss or damage of or to the Cars, usual wear and tear excepted, (12)

(2) any claim, cause of action, damage, liability, cost or expense which may be asserted against Lessee with respect to the Cars other than loss or physical damage (unless occurring through the fault of Lessee), including without limitation the construction, purchase and delivery of the Cars to Lessee's railroad line, ownership, leasing or return of the Cars, or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects, if any, are latent or are discoverable by BRAE or Lessee).

## 11. Representations, Warranties and Covenants

Lessee represents, warrants and covenants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has the corporate power and authority, and is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

(iii) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee.

(iv) There is no fact which Lessee has not disclosed to BRAE in writing, nor is Lessee a party to any agreement or instrument nor subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of the Lessee or the ability of the Lessee to perform its obligations under this Agreement.

(v) Lessee has not during the years 1964-1968 built, leased or purchased new freight cars or rebuilt freight cars.

## 12. Inspection

BRAE shall at any time during normal business hours have the right to enter the premises where the Cars may be located for the purpose of inspecting and examining the Cars to insure Lessee's compliance with its obligations hereunder. Lessee shall immediately notify BRAE of any accident connected with the malfunctioning or operation of the Cars, including in such report the time, place and nature of the accident and the damage caused, the names and addresses of any persons injured and of witnesses, and other information pertinent to Lessee's investigation of the accident. Lessee shall also notify BRAE in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car. Lessee shall furnish to BRAE promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC.

## 13. Miscellaneous

A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that

BC-10/77

(12) unless due to loss or damage created by willful neglect on part of Lessee.

Lessee may not without the prior written consent of BRAE assign this Agreement or any of its rights hereunder or sublease the Cars to any party, and any purported assignment or sublease in violation hereof shall be void.

B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by BRAE in connection with the acquisition of the Cars in order to confirm the financing party's interest in and to the Cars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in Section 7 and in furtherance of this Agreement.

C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars except as a lessee only.

D. No failure or delay by BRAE shall constitute a waiver or otherwise affect or impair any right, power or remedy available to BRAE nor shall any waiver or indulgence by BRAE or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

E. This Agreement shall be governed by and construed according to the laws of the State of California.

F. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the president of the other party at the address set forth above.

G. On the expiration of the initial lease term, Lessee shall have the option, if it is not then in default hereunder, to purchase the Cars on each Schedule at the then fair market value of such Cars; provided that if the Lease terminates for any reason prior to fifteen years from the date upon which the\*Cars on such Schedule have been delivered, this option shall be of no further force and effect. "If Lessee declines to exercise this option, BRAE may sell such Cars to any third party. Upon receipt by BRAE of any bona fide offer from any third party to purchase any or all of such Cars, BRAE shall give Lessee written notice thereof, which notice shall specify the terms on which such sale to such third party is to be made. If within fifteen days of its receipt of such notice, Lessee makes a written offer to, purchase such Cars on terms at least as favorable to BRAE as those set out in such third party offer, BRAE shall accept Lessee's offer and shall sell such Cars to Lessee on the terms and conditions set out therein.

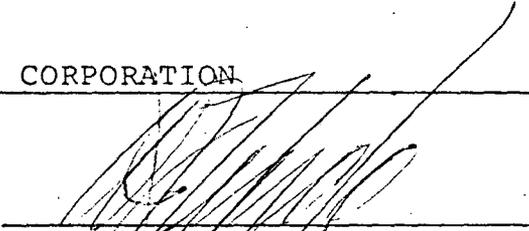
H. BRAE will extend its physical damage insurance coverage to protect against the consequences of an event of loss involving the Cars while on Lessee's tracks. Any incremental charges for said coverage (but not to exceed \$10 per year per car for the first year and thereafter shall include any increase in cost for such additional coverage after the first year) will be deducted from Lessee's portion of revenues received. Should utilization fall below 88.5% Lessee will remit to BRAE the amount required for the incremental charges. BRAE will also name Lessee as additional insured on its public liability and property damage coverage. However, at any time, Lessee has the option to self insure or obtain other insurance.

\*last of the

I. If any provision of this agreement should be determined unenforceable, it shall be deemed in-operative and severable from this agreement which shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

BRAE CORPORATION

BY: 

TITLE: President

OREGON PACIFIC & EASTERN  
RAILWAY COMPANY

BY: 

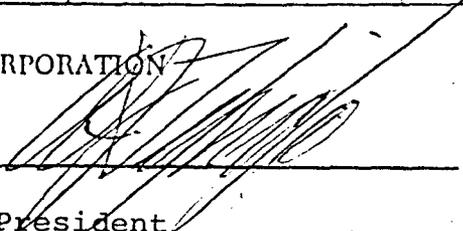
TITLE: Vice President

EQUIPMENT SCHEDULE No. 1

BRAE CORPORATION hereby leases the following Cars to OREGON, PACIFIC & EASTERN RAILWAY COMPANY pursuant to that certain Lease Agreement dated as of March 29, 1978.

A.A.R. Mech. Design	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	50' 70 ton General Purpose boxcars with 10" end of car cushioning Specifications shall be more particularly agreed upon between BRAE & Lessee	OPE 15101 OPE 15200	50' 6"	9' 6"	11' 1-3/4'	DBL 8' offset	100

BRAE CORPORATION

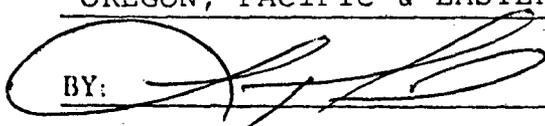
BY: 

TITLE: President

DATE: March 29, 1978

BC-10/77

OREGON, PACIFIC & EASTERN RY. CO

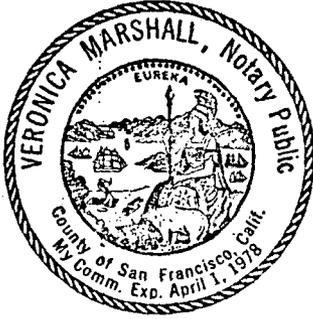
BY: 

TITLE: Vice President

DATE: March 29, 1978

STATE OF California }  
COUNTY OF San Francisco }

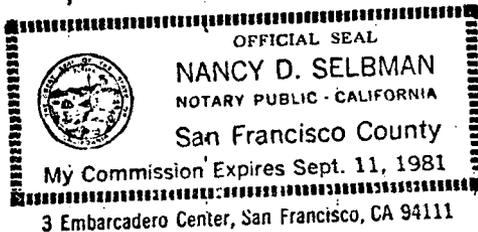
On this 29th day of March, 1978, before me personally appeared L.T. Cecil, to me personally known, who being by me duly sworn says that such person is Vice President of Oregon Pacific & Eastern Railway Co., that the foregoing Equipment Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.



*Veronica Marshall*  
Notary Public

STATE OF California }  
COUNTY OF San Francisco }

On this 29th day of March, 1978, before me personally appeared W.J. Texido to me personally known, who being by me duly sworn says that such person is President of BRAE CORPORATION, that the foregoing Equipment Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.



*Nancy D. Selbman*  
Notary Public

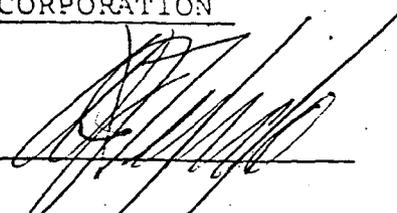
Rider No. 1 to the Lease Agreement made as of March 29, \_\_\_\_\_, 19 78, between BRAE CORPORATION and OREGON, PACIFIC & EASTERN RAILWAY.

A New Section 1C is added as follows:

"BRAE and Lessee agree that, as between themselves, Lessee shall be entitled to claim the benefits of any available Investment Tax Credit for Federal income tax purposes in connection with acquisition of the Cars bearing the identifying numbers OPE 15101-OPE 15200 set forth on Equipment Schedule No. 1 to the Agreement. Such Cars shall be new equipment when delivered to Lessee hereunder and BRAE agrees to execute such documents as may be required to permit Lessee to claim any Investment Tax Credits relating to such Cars."

For the purposes of determining the rent for the Cars bearing the identifying numbers OPE 15101-OPE 15200 set forth on Equipment Schedule No. 1 to the Agreement, the number "88.5 per cent" shall be substituted in Section 6A (i) and 6A (ii) for the number "90 per cent" each time it appears.

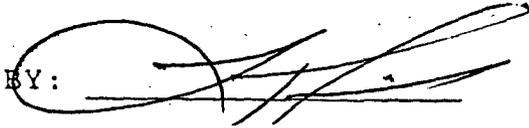
BRAE CORPORATION

BY: 

TITLE: President

DATE: March 29, 1978

OREGON, PACIFIC & EASTERN RY. CO.

BY: 

TITLE: Vice President

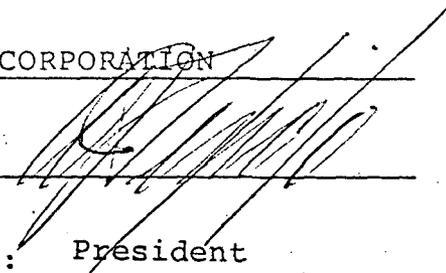
DATE: March 29, 1978

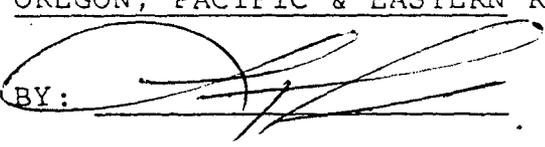
Rider 2 to the Lease Agreement made as of 29th day of March, 1978, between BRAE Corporation and OREGON, PACIFIC & EASTERN RY.

- 1) Lessee agrees to make minimum rental payment equal to 40% of BRAE Base Rental if utilization goes below 40%. However, Lessee may at its option cancel lease upon 30 days notice should utilization go below 40%.
- 2) Prior to August 1, 1978, BRAE shall provide documentation satisfactory to Lessee of financing arrangements adequate to cover purchase of Cars subject to this agreement; in the event of BRAE's failure to do so, Lessee shall thereafter be entitled, by written notice to BRAE, to terminate its obligation under this agreement.

BRAE CORPORATION

OREGON, PACIFIC & EASTERN RY.

BY: 

BY: 

TITLE: President

TITLE: Vice President

DATE: March 29, 1978

DATE: March 29, 1978

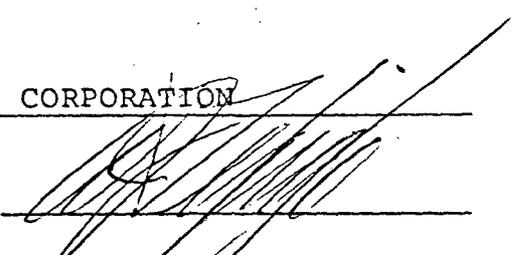
- 3) This agreement subject to the following:
  - a) Notwithstanding the last sentence of Section 5C, Lessee shall use its best efforts to have BRAE named as additional insured on its public liability policy per Section 5C.
  - b) BRAE will cause Lessee to be named as additional insureds on its public liability policy, or will obtain separate insurance coverage for Lessee with a carrier acceptable to Lessee, to protect against the consequences of any claims for personal injury or property damage arising out of the operation of the cars while the cars are off Lessee's tracks. The cost of such additional coverage shall be paid fifty percent (50%) by BRAE and fifty percent (50%) by Lessee; provided however, that BRAE's payment in any one year shall not exceed one percent (1%) of the gross revenues received pursuant to this Agreement by BRAE during such year. At any time before such payment is due, Lessee may at its option, by written notice to BRAE, decline to have itself so named. If Lessee elects to have itself so named as additional insured Lessee may at its option, by written notice to BRAE, elect to terminate such insurance coverage as of any next following date on which payment of the premium for such coverage is due.

Rider No. 3 to the Lease Agreement made as of  
March 29, 1978, between BRAE and OREGON, PACIFIC  
& EASTERN RY. CO.

Section 6A (i) is hereby amended by deleting such  
section in its entirety and substituting, in lieu thereof,  
the following:

"(i) BRAE shall receive all payments made to  
Lessee, not to include switch charges or other revenue,  
generated by the railroad, by other railroad companies  
for their use or handling of the Cars for mileage charges,  
straight car hire payments, and incentive car hire pay-  
ments, or such similar charges which Lessee may share in  
revenue as defined in this agreement, (all of which pay-  
ments made to Lessee are hereinafter collectively referred  
to as ("payments") if the utilization of all of the Cars  
delivered to Lessee on an aggregate basis for each calendar  
year shall be equal to or less than 90 per cent. For  
the purpose of this Agreement, utilization of the Cars  
shall be determined by a fraction, the numerator of which  
is the aggregate number of days in each calendar year  
that car hire payments are earned by Lessee on the Cars,  
commencing from the date of delivery as specified in  
Section 3A, and the denominator of which is the aggregate  
number of days in each calendar year that the Cars are on  
lease to Lessee, commencing from the date of delivery  
(such term referred to as "utilization").

BRAE CORPORATION

BY: 

TITLE: President

DATE: March 29, 1978

OREGON, PACIFIC & EASTERN RY. CO.

BY: 

TITLE: Vice President

DATE: March 29, 1978